IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6605 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOMABHAI R PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR Jayesh Bhairavia, with Mr BS PATEL for Petitioner

Mr R V Desai, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/12/2000

ORAL JUDGEMENT

The petitioner above named, has preferred this petition under Article 226, 14 and 16 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the order passed by the Principal Secretary, Revenue Department, Government of Gujarat on 18.6.1992 placed at Annexure 'B' to the

petition. The petitioner was granted a piece of land admeasuring at 2000 sq. metre on lease by order of Collector, Amreli in September, 1979 for industrial purpose on the conditions mentioned in the order itself.

2. One of the conditions was that the petitioner was not entitled to raise any construction on the said land. The petitioner thus, felt that since the land was granted for industrial purpose, he could not use the said land for the said purpose, unless he was permitted to raise construction on the said land. Therefore, he requested the Collector for granting permission to raise construction on the said land.

3. The Collector was pleased to accept the said prayer and an order was passed by the Collector permitting the petitioner to raise construction on the said land. The said order has been placed at Annexure 'E' at page 22. The aforesaid lease was for a period of 5 years and, therefore, it was extended for a further period of 5 years at the instance of the petitioner. However, the petitioner could not raise construction and could not start his factory and, therefore, the lease was cancelled and extension was not granted and the land was ordered to be resumed by the State Government. Even the revision application was dismissed as aforesaid and, therefore, the present petition has been filed by the petitioner to challenge the said order in revision by the State Government.

4. On receipt of the petition, notice was issued at the first instance. Rule was issued, thereafter, Mr R V Desai, learned AGP for the respondents appeared, in response to the service of rule. I have heard Mr J V Bhairavia, learned Advocate for the petitioner and Mr R V Desai, learned AGP for the respondents and have perused the papers. The facts are not at all in dispute that the land was granted for a period of 5 years for starting factory on the said land. At the first instance, no construction was permitted on the said land but in 1980, the petitioner was permitted to raise construction on the said land. Therefore, at least on and from the date of the said order, the petitioner was at liberty to raise construction on the said land for the purpose of starting some sort of factory on the said land.

5. It is an admitted position that the petitioner has not completed the construction work and has not started his factory on the said land. Therefore, the proceedings were undertaken and ultimately, the lease was not extended and the land was ordered to be resumed by

the State.

6. The case of the petitioner can be gathered from a letter addressed to the Collector, Amreli placed at Annexure 'H' at page 25 to the petition which is dated 18.10.1989 that -

(i) The possession was handed over on 15.12.1980 and the petitioner has spent an amount of Rs.5,000/- for preparing plans and estimates.

(ii) For digging and foundation, an amount of Rs.4,000/- has been spent by the petitioner.

(iii) The petitioner has further spent an amount of Rs. 15,000/- for stones etc. purchased for the said purpose.

(iv) The petitioner has paid an amount of Rs.5,323/- on 7.3.1983 towards the amount of lease and has spent a further amount of Rs.30,000/- for the construction purpose.

(v) Since the lease was only for a period of 5 years, the petitioner did not find it proper to raise construction on the said land and, therefore, he had applied on 15.1.1982 for granting the land on a permanent basis to the petitioner.

(vi) A second application for the above purpose was submitted and, therefore, the construction was not raised since there was no reply to the said application.

(viii) The petitioner is prepared to construct shed on the said land and to start his factory, if the land is permanently sold under a sale deed to the petitioner.

7. This was a land leased to the petitioner for a limited period of 5 years. The petitioner has not even constructed and has not even started his factory in accordance with the terms and conditions of the lease. Learned Advocate for the petitioner has argued at length that in view of the aforesaid position, construction was not made by the petitioner on the said land. The above

are not satisfactory and acceptable reasons for not constructing shed on the said land. It is a fact that the land was granted on lease basis and, therefore, the petitioner cannot claim as a matter of right to get the land on permanent basis. After all the land is Government land and the Government cannot be compelled to sell the same against their desire. Any way the aforesaid are not grounds which can be said to be reasonable which prevented the petitioner from raising construction and from starting factory on the said land. Even after a passage of over 20 years, he has no where stated that the factory has been constructed and it is being functioning.

8. In the above view of the matter, the land was granted for a particular purpose in accordance with the terms and conditions made in the order of granting lease and when the conditions have not been fulfilled, the Government was entitled to resume the land. The petitioner had no vested right to get that period of lease extended for indefinite period and under the circumstances, it cannot be said that the Collector has committed any illegality in resuming the land. There is nothing on record to show that the Collector has committed any illegality in not granting extension to the petitioner who failed to raise construction within the stipulated time and when the order of the Collector is not found to be illegal, the order in revision passed by the Government confirming the said order of the Collector is equally not illegal.

9. At one stage Mr J V Bhairavia, learned Advocate for the petitioner has made a statement that though the revision application has been filed by the petitioner in 1991, the same has yet not been disposed of. However, the petitioner himself has submitted a copy of the judgment and order of the Government as Annexure 'B' at page 14, showing that the aforesaid revision filed by the petitioner against the order of the Collector dated 28.11.1991 has already been disposed of on 18.6.1992. This shows that the aforesaid statement made by Mr Bhairavia is against the document submitted by the petitioner along with the petition. Any way, the fact remains that the Collector cannot be said to have committed any illegality in passing the order of resumption of land when the terms and conditions of the grant have not been fulfilled.

10. In that view of the matter, there is no merit in the present petition and accordingly it is required to be

dismissed.

It is to be seen that ordinarily the court may not pass any order about the costs. Here the facts are different. Though the revision has already been disposed of in 1992 and when the copy of the order of revision has been placed on record at Annexure 'B', the arguments have been advanced that the revision of the petitioner of 1991 has yet not been disposed of. Another aspect of the case is that the petitioner occupied the land for 10 years and yet he failed to follow the terms and conditions of the grant and, therefore, he was in illegal possession of the land for a very long time. Moreover, it is mentioned that the petitioner could not get loans and, therefore, he could not construct shed on the said land. This should have been considered by the petitioner before taking the land on lease and not after taking the same. At least, he could have voluntarily surrendered the land when he found that he could not raise construction and start factory on the land in question.

In the above view of the matter, this petition is dismissed with costs of the respondent. Rule discharged. Interim relief is vacated.

22.12.2000 [D P Buch, J.]
msp.